

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEN Z. CHEN *et al.*,

Plaintiffs,

-against-

REPUBLIC RESTAURANT CORP. *et al.*,

Defendants.  
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:  
: 07 Civ. 03307  
:

: **AFFIDAVIT OF**  
: **JOEL E. COHEN, ESQ.**  
:

STATE OF NEW YORK     )  
                                  ) ss.  
COUNTY OF NEW YORK    )

JOEL E. COHEN, being duly sworn, deposes and says:

1. I am duly admitted to practice law in this Court and am a partner at the law firm of McDermott Will & Emery LLP, counsel for defendants Republic Restaurant Corp., (the "Restaurant"), Republic GC, LLC, Me'kong Delta, Inc., Huy Chi Le, Linh Hue Le and Liang Jin Lin, (collectively, "Defendants") in the above-captioned action.

2. I am fully familiar with the facts of this proceeding and make this affidavit in support of Defendants' Objections to the June 18, 2008 Order of Judge Ellis denying Defendants request for Plaintiffs' tax returns (the "June 18th Order").

3. On May 5, 2008, Judge Ellis held a conference (the "Conference") that I attended as lead counsel for Defendants. At the conference, Judge Ellis entertained informal oral arguments concerning the Defendants' request for Plaintiffs' tax returns. At the conference, Plaintiffs took the position that discovery of the EITC would not assist Defendants in establishing their *in pari delicto* theory because the credits provided from the EITC do not encourage individuals to report a lower salary on their tax returns. Defendants argued that the

tax returns would tend to prove that Plaintiffs had a hand in designing Defendants' unlawful pay practices so that they could report a lower salary on their tax returns to take advantage of the ETIC. At the conference, Judge Ellis stated that he was inclined to agree that if Plaintiffs had some role in the wrongdoing for which they now seek relief, Defendants should have the ability to prove that at trial to limit Plaintiffs' recovery in this action. At the end of the conference, Judge Ellis asked Plaintiffs to submit an explanation as to why the EITC was not likely to lead to the discovery of admissible evidence and told Defendants they could submit a letter in response. A number of the Plaintiffs attended the conference with Judge Ellis along with their interpreter.

4. Attached hereto as Exhibit ("Ex.") A is a true and correct copy of Judge Ellis' March 26, 2008 Order.

5. Attached hereto as Ex. B is a true and correct copy of Defendants' April 22, 2008 letter.

6. Attached hereto as Ex. C is a true and correct copy of Plaintiffs' April 24, 2008 letter.

7. Attached hereto as Ex. D is a true and correct copy of the Defendants' April 28, 2008 letter.

8. Attached hereto as Ex. E is a true and correct copy of the Plaintiffs' April 29, 2008 letter.

9. Attached hereto as Ex. F is a true and correct copy of the Defendants' May 1, 2008 letter.

10. Attached hereto as Ex. G is a true and correct copy of Plaintiffs' May 13, 2008 letter.

11. Attached hereto as Ex. H is a true and correct copy of Defendants' May 16, 2008 letter.

12. Attached hereto as Ex. I is a true and correct copy of Defendants' May 19, 2008 letter.

13. Attached hereto as Ex. J is a true and correct copy of the June 18th Order.

WHEREFORE, the undersigned respectfully requests that this Court sustain Defendants' objections and compel the production of Plaintiffs' tax returns.

  
Joel E. Cohen

Duly sworn to before me this  
2nd day of July 2008

  
Notary Public

NYK 1168253-1.079795.0011

**JOANNE ALNAJJAR**  
**Notary Public, State of New York**  
**No. 02AL6164964**  
**Qualified in New York County**  
**Commission Expires May 7, 2011**